IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

RCRev..No. 328 of 2007()

RCA.90/2006 of VI ADDL.DISTRICT COURT, ERNAKULAM
RCP.80/2005 of III ADDL.M.C.EKM (RENT CONTROL)

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: PETITIONERS/APPELLANTS/RESPONDENTS:
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1. M/S. JKL AGENCIES,
PARTNERSHIP FIRM 27/2924 (NEW NO.27/3561),
PARAMBIL ESTATE, PERUVANOOR, THEVARA,
KOCHI-682 015, REPRESENTED BY ITS MANAGING
PARTNER.

2. KOSHY ALEX, S/O. P.K.ALEX, AGED 50 YRS,
PARTNERSHIP FIRM 27/2924 (NEW NO.27/3561),
PARAMBIL ESTATE, PERUVANOOR, THEVARA,
KOCHI-682 015.

3. JOHN ALEX, S/O. P.K.ALEX, AGED 48 YRS,
PARTNERSHIP FIRM, 27/2924, (NEW NO.27/3561),
PARAMBIL ESTATE, PERUVANOOR, THEVARA,
KOCHI-682 015.

BY ADV. SRI.ALIAS M.CHERIAN

RESPONDENT:RESPONDENT/PETITIONER

P.G.VARGHESE, S/O. LATE P.L.GEORGE,
AGED 44 YEARS, 27/3565, 2ND FLOOR,
PARAMBIL ESTATE, PERUVANOOR P.O., THEVARA,
COCHIN-15.

BY ADV. SHRI SHAJI P. CHALY

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 31/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

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R.C.R.NO.328 OF 2007

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Dated this the 31st day of October, 2007

O R D E R

Balakrishnan Nair J.

The tenants are the revision petitioners and landlord is the respondent.

2. The tenants are in occupation of three rooms in a multi-storied building. One of them belongs to the respondent/landlord. The Rent Control Petition was filed claiming that the wife of the landlord requires the said room for her occupation to run a shop for ready made garments/tailoring. The landlord's wife is depending on him for the accommodation. They have no other suitable rooms to house the business.

3. The Rent Control Petition was resisted by the tenants contending that the requirement put forward by the landlord is only a ruse to evict them. His wife does not require the room for any business. Further, it is not a suitable room for running a garment/tailoring business. In the up stair portion of the building the landlord has other rooms in his possession, in which the business can be accommodated. The tenants mainly depend on their income from the tenanted premises for their livelihood. No other suitable rooms are available in the locality.

4. Before the Rent Controller, P.Ws.1 and 2 were examined from the side of the landlord and Exts.A1 and A2 were marked. From the side of the respondents, RW.1 was examined and Exts.B1 to B3 were marked. The Commissioner's report was marked as Ext.C1. The Rent Controller allowed the application under Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act (hereinafter referred to as 'the Act'). In appeal, the said finding was affirmed by the Appellate Authority also. Hence, this revision.

5. Learned counsel for the revision petitioners mainly urged three points to attack the finding of the Appellate Authority under Section 11(3) of the Act. Learned counsel submitted that the landlord was having rooms in the up stair portion of the building and therefore in the absence of special reasons, the tenants are entitled to get protection of the first proviso to Section 11(3) of the Act. But we notice that the landlord is residing in the up stair portion. This is a finding rendered concurrently by both the authorities. Though learned counsel for the petitioners vehemently attacked the said finding, we find it difficult to hold that the said finding of the Appellate Authority is illegal, improper or irregular. It is certainly a plausible view on the facts and evidence on record. The landlord's statement in his deposition that he is residing in the up stair portion, has not been shattered in cross examination by the tenants. Therefore, the first ground

urged by the learned counsel for the petitioners fails.

6. The next point urged is that the finding of the Appellate Authority on the first limb of the second proviso is untenable. Evidence adduced by them, has been used against them, it is submitted. The Appellate Authority noticed that the second petitioner's expenses exceeded his admitted income as per the income tax returns. The learned counsel for the petitioners made a suggestion that the additional income can be from the very same business which is not returned by him. Since RW.1 did not have any such case in his deposition, we feel that the view taken by the Appellate Authority that the said income can be presumed to be from other sources, cannot be said to be perverse. So, the finding on the first limb of the second proviso to Section 11(3) cannot be disturbed.

7. Learned counsel thirdly, attacked the finding of the Appellate Authority as well as the Rent Controller on the second limb of the second proviso to Section 11(3) of the Act. But we notice that the landlord has discharged his initial burden by stating that there are other rooms in the locality which are suitable for the purpose of the tenants. But the tenants have failed to prove that no rooms are available and even if rooms are available, they are not suitable for their business. This view taken on the basis of the materials on record, and the deposition of the witnesses by the

appellate authority, cannot be described as a perverse finding warranting our interference.

7. Finally, learned counsel for the petitioners made a prayer that the petitioners may be given some time to vacate the premises. Learned counsel pointed out that the petitioners have already purchased a small plot of land and are taking steps to construct a building there, so as to house their business there. On this point we heard learned counsel for the landlord also. Having regard to the facts of the case, the petitioners are granted six months' time from today to vacate the tenanted premises, on condition that they file an unconditional undertaking before the execution court in the form of an affidavit undertaking to vacate the premises within six months from today. They shall also pay the rent due for the schedule room from time to time till the room is vacated. The affidavit in this regard shall be filed within three weeks from today.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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